
(2023) 12 TDSAT CK 0020

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Broadcasting Petition No. 368 Of 2017, 33 Of 2019

Union of India

APPELLANT

Vs

Kamyab Television Pvt Ltd

RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Telecom Regulatory Authority of India Act, 1997 — Section 14, 14A
Evidence Act, 1872 — Section 65B, 102
Limitation Act, 1963 — Article 2, 25, 112

Citation : (2023) 12 TDSAT CK 0020

Hon'ble Judges : Ram Krishna Gautam, Member

Bench : Single Bench

Advocate : Ankur Singh, Abhijeet Singh, Rudresh Tripathi, Rudresh Tripathi,
Ankur Singh, Abhijeet Singh

Final Decision : Dismissed

Judgement

Ram Krishna Gautam, Member

1. This Broadcasting Petition No. 368 of 2017, under Section 14 read with Section 14 (A) of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act") has been filed by, Petitioner, Union of India, Department of Space, Government of India, Antariksh Bhavan, Bengaluru, Karnataka by Authorised Signatory, Shri M.S. Krishnan, Sr. Head (Legal), Antrix Corporation Ltd. (Contract Administrator), against Kamyab Television Pvt Ltd, a company incorporated under the Companies Act, 1956, having its registered office at 159, Alaka, Unit – II Ashok Nagar, Bhubaneswar Orissa – 751009 (Through its Directors Manoj Dash and Lipi Dash), with a prayer for a decree, in favour of Petitioner, against Respondent, for an amount of Rs. 5,81,85,249/- (Rupees Five Crore Eighty One Lakh Eighty Five Thousand Two Hundred and Forty Nine only), alongwith award of pendentelite and future interest, till actual date of payment @ 18% p.a. due in favor of Petitioner, against Respondent, under and in relation to the agreement No. INSAT4A/C/TV/56/2012, dated

01.04.2012, entered, in between, Petitioner and Respondent, and amended from time to time.

2. This Broadcasting Petition No. 33 of 2019, under Section 14 read with Section 14 (A) of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as "TRAI Act"), has been filed by, Petitioner Kamyab Television Pvt Ltd, against Union of India, through Secretary, Department of Space, Government of India, and Antrix Corporation Limited, respondents, with a prayer for a mandate to Respondent, to enter into a fresh agreement for the lease of 4.5 MHz Space Segment Capacity in the INSAT system, more particularly on INSAT-4A, with immediate effect, and to hold and declare that De-allocation letter dated 07.02.2017, issued by the Respondent, is bad in law. Respondent is not entitled to any penal interest, or other charges as claimed from the Petitioner, with a permanent injunction against Respondent, from de-allocating the C-Band capacity of 4.5MHz in INSAT-4A, allotted in favour of the Petitioner.

3. In Brief, the contention of Petition in Broadcasting Petition No. 368 of 2017, is that Respondent company requested the Petitioner i.e., Department of Space, to provide capacity on its satellite for the purpose of meeting its Television Broadcasting requirements. Whereupon, both entered, into an agreement INSAT-Lease-4A-56-2008 dated 01.02.2008 for use of transponder capacity, for broadcasting of the Respondent's satellite channel, from 15.08.2008 onwards. This agreement is Annexure P-3 to Petition. This agreement dated 01.02.2008 was amended from time to time, inter-alia, by amendments dated 11.10.2008, 01.11.2011 and 01.01.2012 and these amended agreements are Annexure P-4 (colly) to Petition.

4. Despite availing the services of use of capacity of the Petitioner's satellite transponders, the Respondent herein failed to make regular and timely payments of monthly charges, due under the agreement, dated 01.02.2008, from the very beginning. On 12.02.2010, Antrix Corporation Ltd., was constrained to send a letter, demanding payment of outstanding dues, in the tune of Rs. 27,82,574/- (Rupees Twenty Seven Lakhs Eighty Two Thousand Five Hundred Seventy Four only), (including the month of February 2010). This letter dated 12.02.2010 is Annexure P-5 to Petition.

5. Respondent was finally persuaded to substantially clear its dues, on or before 26.03.2010, and an undertaking to this effect was signed by the Respondent. However, thereafter for the period after April 2010, the Respondent once again failed to make payment. In these circumstances, letters dated 13.10.2010, 09.12.2010, 11.01.2011 and 12.01.2011 were sent by Antrix, to the Respondent. These Letters are Annexure P-6 (colly), to Petition. On 14.02.2011, a notice demanding payment of outstanding dues, to the tune of Rs. 58,26,771/- (Rupees Fifty Eight Lakhs Twenty Six Thousand Seven Hundred Seventy One only), was sent by Antrix to the Respondent, failing which the Petitioner was constrained to black out the signal of the Respondent. This notice is Annexure P-7 to Petition. On 08.03.2011, the Respondent gave an undertaking acknowledging its liability

towards principal and interest dues. The demand draft for Rs. 20,00,000/- (Rupees Twenty Lakhs only) with a promise to make payment of the balance outstanding of Rs. 43,78,271/- (Rupees Forty Three Lakhs Seventy Eight Lakhs Two Hundred Seventy One only), alongwith interest on delayed payment was given, which is Annexure P-8 to Petition.

6. Thereafter, as a special case, the Respondent was given an extension to clear all outstanding dues (including accumulated interest) by September 2012. The Petitioner and the Respondent, executed a fresh agreement for transponder capacity i.e. Agreement No. INSAT4A/C/TV/56/2012 dated 01.04.2012, in supersession/lieu of the earlier agreement, dated 01.02.2008, as amended from time to time. This amended agreement dated 01.04.2012 is Annexure P-1 to Petition. It is having the payment schedule (Exhibit B to the Contract), and the Respondent was liable to pay Rs. 75,00,000/- (Rupees Seventy Five Lakhs only), p.a., i.e. Rs. 6,25,000 (Rupees Six Lakhs Twenty Five Thousand only) per month, for 4.5MHz of transponder capacity calculated on the contractual rate of Rs. 6,00,00,000/- (Rupees Six Crores only) per transponder i.e. 36MHz of capacity per annum, apart from applicable taxes. Further, under the Payment Schedule to the Agreement (Exhibit B), the Respondent was liable to deposit a 'caution deposit' of Rs. 18,75,000/- (Rupees Eighteen Lakhs Seventy Five Thousand only) representing Rs 25% of the annual charges for the transponder capacity, which was interest free, and refundable upon final reconciliation of accounts with remittance of all dues. Under the Agreement, invoices were to be raised in advance, payable before the 5th day of each month. In the event of default or delayed payment, interest was chargeable at 3%, over and above the prime lending rate of State Bank of India. Initially, the Agreement dated 01.4.2012 was valid up to 31.03.2013. It was amended from time to time, and terms of agreement, was extended from time to time, till the date of its termination, on 07.02.2017. Vide Amendment No. 3 dated 01.04.2014, interest on delayed payment, was chargeable at the same rate, as SBI's Base Lending Rate, as opposed to SBI Prime Lending Rate plus 3%. These amendments are Annexure P-9 (colly), to Petition.

7. Vide Amendment No. 4, dated 01.04.2015, in the agreement dated 01.04.2012, the parties agreed in Article 2 of the agreement with the applicable space segment charges, will be as per the DOS pricing policy. During the terms of the agreement, DOS may revise the norms, guidelines, procedures and space segment charges for INSAT/GSAT satellite system. DOS reserves its right to recover the differential Space Segment Charges, retrospectively, in case the revised charges are higher than the currently applicable charges. Customer agreed to abide by revised norms, guidelines, procedures and to pay the Space Segment Charges, including differential Space Segment Charges, as and when it becomes applicable/effective. By Amendment No. 5, dated 01.04.2016, to the Agreement, dated 01.04.2012, the parties reiterated the addition of contention that the applicable space segment charges will be as per the prices in policy. During the term of the Agreement, DOS may revise the norms, guidelines,

procedures and space segment charges for INSAT/GSAT satellite system. DOS reserves its right to recover the differential Space Segment Charges, retrospectively in case the revised charges are higher than the currently applicable charges. Customer agreed to abide by revised norms, guidelines, procedures and to pay the Space Segment Charges including differential Space Segment Charges, as and when it becomes applicable/effective.” However, despite repeated reminders and continuous follow-up, the Respondent failed to make regular and timely payments in accordance with the agreement between the parties. Rather it made a piecemeal payment in a highly irregular manner. On 07.01.2015 and 16.01.2015, it made payment of Rs. 2,00,000/- (Rupees Two Lakhs only), each on the respective dates, for which credit was given by Antrix, in the Ledger Account of the Respondent. True copy of emails dated 07.01.2015 and 16.01.2015 are Annexure P-10 (colly), to Petition.

8. As on 10.03.2015, the dues of the Respondent, had grown to Rs. 3,70,99,304/- (Rupees Three Crores Seventy Lakhs Ninety Nine Thousand Three Hundred Four only). On 11.03.2015, a notice demanding outstanding dues was sent to the Respondent by Antrix. This notice is Annexure P-11, to Petition. On 21.03.2015, the Respondent sent a reply to Antrix, without prejudice to its right to dispute the outstanding amount and without prejudice to the Petitioner’s right to terminate the agreement between the parties and suspend the services. Antrix, was surprised to note from the contents of the letter that Managing Director of the Respondent, was in jail for involvement in a ‘Chit Fund Scam’ in Orissa. The Respondent, further falsely claimed that its default was for the reasons behind its control/force majeure, although it had a history of being a wilful defaulter and there was no basis whatsoever for its stand. This letter is Annexure P-12, to Petition. On 23.03.2015, Antrix received an Email from the Respondent, stating therein that it was in the process of arranging funds to clear the outstanding dues. But sought time of 4-6 months for the same. This Email is Annexure P-13, to Petition. Again on 27.03.2015, an email by Respondent to Petitioner, mentioning to transfer Rs.50,000/-(Rupees Fifty Thousand only) with an assurance to transfer, within a few days was there. It is Annexure P-14 to Petition.

9. On 18.05.2015, total outstanding was Rs. 4,12,05,640/- (Rupees Four Crore Twelve Lakhs Five Thousand Six Hundred Forty only) for which no payment was made. Vide Amendment No. 4 dated 01.04.2015, the agreement dated 01.04.2015, was further amended with consent of both side, wherein security deposit was increased to Rs. 21,37,500/-(Rupees Twenty One Lakhs Thirty Seven Thousand Five Hundred only), and Respondent was to make the deposit of additional security. On 02.07.2015, the Respondent claimed to have remitted further Rs.1,00,000/- (Rupees One Lakh only) towards the outstanding dues. Rs. 2,62,500/- (Rupees Two Lakhs Sixty Two Thousand Five Hundred only), was said to be further remitted towards additional securities. But no Bank guarantee was meted by Respondent as per terms of amended contract. Even after repeated letter of demand annexed as Annexure P-17 Colly, to petition, no payment was

made. Rather a letter, dated 27.06.2016 of Respondent, was with a prayer for additional time, to clear its outstanding dues. Some amount was disputed to have been deposited, but not adjusted. A part payment of Rs. 10,00,000/- (Rupees Ten Lakhs only) was made on 27.06.2016 and 28.06.2016, this was shown in the credit, in the ledger account of the Respondent. This is Annexure P-19, to Petition. Regular raising and sending of invoices for service availed by Respondent, with specific mention of total dues of Rs. 5,35,49,882/- (Rupees Five Crores Thirty Five Lakhs Forty Nine Thousand Eight Hundred Eighty Two only), was reported by letter dated 02.11.2016, Annexure P-22, to Petition. Though vide letter dated 18.11.2016 mis-calculation was complained by Respondent and reconciliation was said to be attempted, but of no effort. The outstanding dues as on 06.02.2017 was Rs. 5,52,06,132/- (Rupees Five Crore Fifty Two Lakhs Six Thousand One Hundred Thirty Two only), till 31.03.2017, and this was communicated vide letter dated 06.02.2017 Annexure P-24, to Petition. A debit noted dated 15.05.2017 enclosing 31.03.2017 for Rs.36,85,931/- (Rupees Thirty Six Lakhs Eighty Five Thousand Nine Hundred Thirty One only), towards delayed payment interest was issued by Antrix, to Respondent, which is Annexure P-25.

10. Ultimately, Petitioner stopped Broadcasting of Respondent's channel (Kamyab Television) from its transponders on 07.02.2017, for non-payment of dues and agreement, dated 01.04.2012, amended from time to time, is to be terminated on 07.02.2017. A frequency de-allocation letter, Annexure P-26, was issued to Respondent. Though, Respondent had never disputed its liability and obligation towards the Petitioner. But it failed to honour its legal obligation and making payment of outstanding dues. Ledger account of Petitioner, maintained by Antrix Corporation Limited, depicts the outstanding dues of the Respondent after giving due credit to payments made by it, which is Annexure P-27 to Petition.

11. Respondent's deposits were duly credited, at relevant time in its ledger. On 07.08.2017, the Satellite Communication and Navigation Programme (SCNP), ISRO, Department of Space, issued its policy on Revised Transponder Pricing, by which the annual charges for usage of satellite transponders were revised from Rs. 6,00,00,000/- (Rupees Six Crore only) p.a., to Rs. 7,20,00,000 (Rupees Seven Crore Twenty Lakh only) p.a., in addition to applicable taxes, with effect from 01.04.2016. The said price revision became applicable to the Agreement dated 01.04.2016, between the parties by virtue of the amended provisions of Article 2, of the agreement. Hence, this cause of action for this Petition had arisen, within the territorial jurisdiction of this Tribunal, within Limitation period and under Article 25 of the agreement, dated 01.04.2012, Antrix Corporation Limited (Antrix), being a contract administrator, was vested with all powers for and on behalf of Petitioner, for initiation of legal proceedings, hence, had filed this Petition through Shri M.S. Krishnan, Authorised Signatory, through circular Board Resolution Annexure P-2 to Petition, for above prayed decree.

12. A reply, by Respondent was with this contention, that Petition is mis-

conceived, untenable and factually wrong. By way of this Petition, Petitioner had sought the alleged dues from the period effective from year 2008, it is pertinent to state that the present Petition, has been filed in September 2017. Hence, it is a time barred Petition. Pursuant to expiry of agreement dated 01.02.2008, the Petitioner approached the Respondent, for renewal of agreement. Prior to signing of fresh agreement, the Respondent apart from seeking a reduction in the consideration also raised various issues with regard to regular disruption in the services of the petitioner. However, the Petitioner, having a monopoly in providing space segment capacity, was hell bent on its illegal and unlawful demand. Hence, Respondent was with no option but to succumb and execute the subsequent agreement on 01.04.2012. Exorbitant rates, compared to other operators, were charged from Respondent. Respondent is entitled for a refund on the basis of discrimination. Owing to disruption and irregularity in the services of the Petitioner, the Respondent could not even meet its Television Broadcasting requirements, thereby had suffered financial loss and this was approached by respondent for its redressal of its grievances, but of no heed. Amount claimed by Petitioner, is misconceived, arbitrary and barred by law of limitation. Petitioner had failed to place on record any document in the nature of Statement of account, invoices, etc, alongwith present petition. Even then Respondent was exercising bonafide, and is ready and willing to reconcile the accounts, with the Petitioner. No cause of action had ever arisen. The aforesaid outstanding dues, being said to be due, have been arrived at by the Petitioner, based on self-serving calculations. The contents of Annexure P-32, is being denied. Hence, the prayer was for dismissal of this Petition.

13. On the basis of pleadings of both sides, following issues were framed by Court of Registrar, on 27.04.2018:

1. Whether the claim of Petitioner is barred by limitation?
2. Whether the Petitioner is entitled to the dues along with interest from the Respondent as claimed in the Petition?
3. Whether the quality of service provided by Petitioner to the Respondent is as per the agreement between the parties?

14. Miscellaneous Application No. 124 of 2019 was filed by Petitioner-Union of India, with a specific prayer for a partial decree for Rs. 3,58,57,826/- (Rupees Three Crores Fifty Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six only), in favour of Union of India, against Respondent, on the ground that although the dues claimed by Petitioner are much more, the aforesaid amount stands admitted by Kamyab Television Pvt. Ltd. In a subsequent Petition BP No. 33 of 2019 filed by Kamyab Television Ltd., against present Petitioner admitting outstanding dues of Rs. 3,90,00,000/- (Rupees Three Crores Ninety Lakhs only) and on the basis of this Miscellaneous Application, a counter was obtained and ultimately, this application was allowed with following order passed on 03.09.2019, as below:

"On going though the pleadings and averments made by the parties in these two Petitions, there is no doubt that the aforesaid amount stands admitted and payable by Kamyab Television Pvt. Ltd. Hence, the trial in B.P No. 368 of 2017 will be confined only to the balanced claimed of the Union of India and interim decree for the aforesaid amount of Rs 3,58,57,826/-(Rupees Three Crores Fifty Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six) in favour of Union of India, is passed in the interest of Justice. Kamyab Television Pvt Ltd., the Respondent in BP No. 368 of 2017, is granted two months time to pay the aforesaid admitted dues, failing which, Union of India will be at liberty to realize the same through execution proceedings in accordance with law. The Registry shall try a decree, in terms of this order at early date, preferably within four weeks. Miscellaneous Application No. 124 of 2019 is disposed of in the aforesaid terms".

15. Hence, the present Petition, which was filed for a decree of Rs. 5,81,85,249/- (Rupees Five Crores Eighty One Lakhs Eighty Five Thousand Two Hundred Forty Nine only), plus pendentelite and future interest, along with cost, was partially decreed for admitted amount of Rs. 3,58,57,826/- (Rupees Three Crores Fifty Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six), vide order mentioned above. Hence, this Tribunal, vide Order dated 01.09.2023 directed as below:

"Learned Counsel for Union of India as well as Kamyab Television Pvt Ltd. are present. Issues were framed on 27.04.2018. The preliminary decree was passed for an amount of Rs. 3,98,57,826/-, on 03.09.2019, for the claimed relief amount and this Petition remained pending for adjudication for rest of remaining claimed amount and subsequent interest there upon. But the Head of account, such as Principal amount, interest accrued there at, the foreign exchange amount, if any, are to be specified in the pleading/ Petition itself, for hearing arguments and passing of judgment in this Petition. Those facts are required to be there in Petition itself. Hence, let amended Petition along with affidavit substantiating the same be filed by Petitioner, for making pleadings clear and at ease, within two weeks. List both the matters 'for hearing' on 10.10.2023."

16. In compliance of above order, amended pleading with amended calculation, depicting preliminary decree amount was filed by Petitioner, with this contention that BP No. 368 of 2017 was originally filed on behalf of Petitioner for recovery of dues amounting to INR 5,81,85,249/- (Rupees Five Crores Eighty One Lakhs Eighty Five Thousand Two Hundred Forty Nine only) original principle claimed, along with pendentelite and future interest, due from the Respondent. Abovementioned outstanding dues were calculated after giving the credit to all the payments that were received in a piecemeal manner from Respondent, the last being received on 04.03.2017. A chart, showing calculation of the total outstanding dues, accruing to INR 5,81,85,249/- (Rupees Five Crores Eighty One Lakhs Eighty Five Thousand Two Hundred Forty Nine only) is Annexure – A to this amended pleading. The aforementioned figure included interest from the period

01.04.2017 to 31.08.2017 amounting to INR 15,20,060/- (Rupees Fifteen Lakhs Twenty Thousand and Sixty only) and the difference, due to increase/ revision, in transponder lease charges for the period 01.04.2016 to 06.02.2017 i.e., the date of de-allocation of the capacity, which amounted to INR 15,06,607/- (Rupees Fifteen Lakhs Six Thousand Six Hundred and Seven only). That on 03.09.2019, this Tribunal, was pleased to pass a partial decree awarding Rs. 3,98,57,826/- (Rupees Three Crores Ninety Eight Lakhs Fifty Seven Thousand Eight Hundred and Twenty Six only) as partial decree amount in favour of Petitioner. Though Respondent failed to deposit the partial decree amount hence, Execution Petition No. 1 of 2020, was filed and is pending before Tribunal. Respondent had not paid against the partial decree amount. The matter remained for adjudication was the remaining amount of Rs. 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred and Twenty Three only) remaining principal claimed. This principal claim is to be awarded along with pendentelite and future interest. The calculation sheet depicting the remaining principal claim after notional adjustment of partial decreed amount is Annexure-C to this amended pleading. This remaining principal claimed of INR 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred and Twenty Three only), includes interest for the period from 01.04.2017 to 31.08.2017 i.e., INR 15,20,060/- and the difference due to increase/ revision in transponder lease charges for the period 01.04.2016 to 06.02.2017 i.e., the date of de-allocation of capacity amount of INR 15,06,607/-. Hence, the claim for adjudication remained for remaining principal claim of INR 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred and Twenty Three only), along with pendentelite and future interest.

17. Broadcasting Petition No. 33 of 2019 was filed, by Kamyab Television Pvt. Ltd., against Union of India and Antirix Corporation Ltd. Under Section 14 read with Section 14 (a) of the TRAI with this contention that Respondent unilaterally de-allocated/disconnected the satellite capacity, provided by the Respondent, on 9.02.2017. Hence, mandatory direction as well as prohibitory injunction, in the tune of relief, written as above, was prayed in this Petition. Respondent by way of notice dated 07.02.2017, unilaterally suspended its services due to which the news channel of Petitioner namely, 'Odisha TV', stands disconnected. This was done on account of alleged outstanding dues, liable to be paid by the Petitioner, towards the Satellite Capacity provided by the Respondents for the purpose of unlinking and down linking aforementioned Petitioner's channel. While raising arbitrary demands on the Petitioner, Respondents have failed to consider the payments made by the petitioner during the course of business.

18. Broadcasting Petition No. 368 of 2017, titled as Union of India Vs Kamyab Television Pvt. Ltd. was filed by Respondent, as Petitioner for recovery of outstanding dues from the Petitioner on 15.09.2017. Reply by present Petitioner was filed. Without prejudice to the above, it is submitted that against alleged demand, raised by Respondent, to the tune of Rs. 5,44,22,582/- (Rupees Five Crore Forty Four Lakhs Twenty Two Thousand Five Hundred Eighty Two only), the

outstanding dues payable by the Petitioner is only Rs. 3,98,57,826/- (Rupees Three Lakhs Ninety Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six only) for which it is ready and willing to clear the dues in a time bound manner. But this connection facility has been taken arbitrarily making a cause of action within jurisdiction of this Tribunal, Hence, this Petition, with above prayer.

19. In reply, the contention of Petition No. 368 of 2017 has been reiterated by present Respondent and on the basis of Miscellaneous Application moved by present Petitioner as well as present Respondent a preliminary decree for admitted outstanding dues of Rs. 3,98,57,826/- (Rupees Three Lakhs Ninety Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six only) was passed by Tribunal, and the Miscellaneous Application of present petitioner was dismissed, because of being of no substance. The admitted amount too, was not deposited. Hence, the very dispute in this Petition is the same which is the lis in Petition No. 368 of 2017. Hence, both of these Petitions were tagged together and while hearing argument of Learned Counsel for present Petitioner, it was specifically averred by Counsel for Petitioner written in order sheet as below:

"Learned Counsel for Petitioner mentioned that the liability was admitted in BP No. 368 of 2017, because of which a partial decree was passed and drawn by this Tribunal, for which an Execution Application is pending. The relief claimed in this subsequent Petition, had become almost infructuous. The same argument stand for this Petition too. Hence, this is to be also decided along with above Judgment."

20. Hence, this was admitted to have become infructuous, by way of dismissing interim Miscellaneous Application, and non deposit of admitted amount, partially decreed.

21. The leading case is BP No. 368 of 2017 wherein evidence by way of affidavit has been filed, by PW-1, Smt. T. S Shobha, PW-2, Smt. Sonali Nanda and PW-3 Shri M.S. Krishnan, for and on behalf Petitioner. Evidence for and on behalf of Respondent, is of Mr. Manoj Kumar Das. Heard, arguments of Learned Counsel for Petitioner as well as Counsel for Respondent and gone through material placed on record.

22. The proceeding before this Tribunal is a civil proceeding, as has been given in the TRAI Act, itself. In a civil proceeding, the preponderance of probabilities, is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

23. Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh – AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof seizes to have any importance. But while

appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by Privy Council in *Lakshman Vs. Venkateswarloo* – AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in *State of J & K Vs Hindustan Forest Co.* (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but even preponderance of probabilities may serve as a good basis of decision, as was propounded in *M Krishnan Vs Vijay Singh*- 2001 CrLJ 4705. Hon'ble Apex Court in *Raghvamma Vs. A Cherry Chamma* – AIR 1964 SC 136 has propounded that burden and onus of proof are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

24. Issue No.1

Broadcasting Petition No. 368 of 2017, leading case, was filed for and on behalf of Union of India, Department of Space, for recovery of dues in the Tune of INR of Rs. 5,81,85,249/- (Rs. Five Crore Eighty One Lakh Eighty Five Thousand Two Hundred and Forty Nine only), against Respondent, Kamyab Television Pvt. Ltd., during the pendency of this Petition. Consolidated Broadcasting Petition No. 33 of 2019, was filed, with an admission of Rs. 3,98,57,826/- (Rupees Three Crore Ninety Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six only), due against Respondent for the same cause of action for which leading Petition was pending. Hence, in year 2019 admission for that amount was there. The preliminary decree was passed for an amount of Rs. 3,58,57,826/- (Rupees Three Crore Fifty Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six only), leaving behind the remaining amount to be decided, as a dispute, in between, i.e., Rs. 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred Twenty Three only), between parties. Execution Application No. 1 of 2020, has been filed for execution of that partial decree which is still pending. This remaining amount Rs. 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred Twenty Three only), is inclusive of outstanding space segment charges, interest from the period from 01.04.2017 to 31.08.2017 amounting to INR to Rs. 15,20,060/- (Rupees Fifteen Lakhs Twenty Thousand and Sixty only), as well as difference due to increase/revision in transponder lease charges for the period for 1.04.2016 to 06.02.2017, amounting to INR 15,20,060/- (Rupees Fifteen Lakhs Twenty Thousand and Sixty only), for which de-allocation of the capacity was made. Hence, the present dispute is with regard to same amount of INR 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred

Twenty Three only), along with pendentelite and future interest. Hence, this is well within the period of limitation. More so, the present Petition is for and on behalf of Union of India, covered by Article 112 of the schedule appended to the Limitation Act, 1963, wherein period of limitation prescribed is 30 year. This is with support of the Judgment of the Apex Court in Accountant General (A&E) and another Vs. Sethumadhavan Nair, (2004) 13 SCC 14. Para 3 of this judgment has further been written in the judgment of this Tribunal in Broadcasting Petition No. 98 of 2018, Union of India Vs. Seashore Securities Ltd, on judgment on dated 13.02.2020, wherein for such type of case alike between Union of India, Department of Space and Broadcaster, the period of limitation has been written to be of 30 years. Instead of 3 years, given for private parties. Hence, the period of limitation for present lis, is for 30 year and there is specific admission for dues in question, resulting a decree for a part amount written as above, on the basis of admission, made by Respondent, in its Email Annexure P-7 (colly), at page 115 to 118. The assurance for making payment of the dues send from Email by Respondent dated 27.06.2016 Annexure P-18 at page No. 119 to 121 washes away the objection with regard to limitation. Hence, this petition is well within limitation. This issue No. 1, is being decided against Respondent, i.e., in favour of Petitioner.

25. Issue No.2

This Petition has been filed on the basis of expressed terms and conditions enumerated in agreement entered, in between, Petitioner and Respondent, which was amended time to time, Kamyab Television Ltd. Pvt., liability arisen out of an expressed agreement dated 01.04.2012, as amended and extended from time to time, wherein payment schedule was Exhibit-B of the agreement. Respondent was liable to pay INR 75,00,000/- (Rupees Seventy Five Lakhs only) p.a i.e. 6,25,000/- (Rupees Six Lakhs Twenty Five Thousand only) per month for 4.5 MHz for transponder capacity, calculated on the contractual rate of INR 6,00,00,000 (Rupees Six Crore) per transponder equivalent to 36 MHz p.a. apart from applicable taxes. Various Emails/letter/notices were issued at regular interval by Petitioner to Respondent Kamyab Television Pvt. Ltd., seeking payment of the outstanding dues, arisen owing to above agreement, use of the segment. Kamyab Television failed to clear the outstanding, in terms of the subject agreement, even after repeated follow ups. Though acknowledgment of outstanding liabilities was there by different letters, annexed with Petition. Part payments were made and the ledger of the account, the statement, made by Petitioner company as of Respondent, in its ordinary course of business, has been annexed as Annexure P-27 at page No. 142 to 162 of the Petition. Kamyab Television i.e., Respondent had disputed a calculation of outstanding subscription dues, without providing relevant particulars in form of statement of account, ledger or receipts regarding any miscalculation or mis match or remittance in the ledger statement filed along with Petition in Broadcasting Petition No. 368 of 2017, the Petitioner had filed a chart of all the payments received from Kamyab Television, and its adjustment towards dues by way of affidavit as well as a

certificate under Section 65 B of Evidence Act, for its admission in evidence. As per agreed terms interest for non-payment or delayed payment was to be base lending rate charged by State Bank of India from time to time. The same has been filed on record from the official website of State Bank of India as Annexure P-30, page No. 174 with a total depicting the calculation of delayed payment and interest accrued thereat as Annexure P-32. At no stretch, it was disputed by Respondent that it had not availed services of Petitioner or not utilised / broadcasted its Television channel. Rather there is admission in consolidated petition, regarding the failure to make timely and complete payments in terms of expressed agreement between the parties. There is admission of Rs. 3,58,57,826/- (Rupees Three Crore Fifty Eight Lakhs Fifty Seven Thousand Eight Hundred Twenty Six only), for which a partial decree was awarded by this Tribunal. For rest of amount i.e., INR 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred Twenty Three only), along with pendentelite and future interest, till actual date of payment, there is nothing adversely proved by Respondent. Whereas, the evidence, filed by way of evidence of Smt. T.S. Shobha PW-1, Smt. Sonali Nanda PW-2 and Sh. M.S. Krishnan, PW-3 are uncontroverted by Respondent. These witnesses have not been requested for their cross-examination. Nor affidavit have been cross-examined. Their testimony, which is reiteration of the contention of Petition, has been uncontroverted. Hence, the entire fact has been proved by this evidences, which are uncontroverted. Hence, this liability has been fully proved. Accordingly, this issue is being decided in favour of Petitioner.

26. Issue No.3

There is a contention in reply filed by Respondent that owing to un-satisfactory broadcasting and services given by Petitioner company the request for negotiation was made by Respondent. This fact was to be proved by Respondent. Whereas no specific contention, with regard to unsatisfactory service, is there in the pleading. Rather Respondent in its letter dated 27.06.2016, as well as in the Petition filed in February 2019. It was said that Managing Director, Kamyab Television, because of being in judicial custody in a criminal case of some chit fund company could not make the payment of outstanding dues. In consolidated Petition, outstanding dues were admitted, on the basis of which decree was passed, for which execution application was pending and this remaining amount remained for adjudication. Hence, the very defence, which was taken in this Petition, was of unsatisfactory services and it was with burden of proof, rested upon Respondent. Onus to prove this fact was entirely upon Respondent, and an affidavit for and on behalf of Respondent is on record. Wherein the contention of Mr. Manoj Kumar Das, was that Respondent company was a victim on a part of Petitioner company and respondent was coerced to pay Rs. 6,00,00,000/- (Rupees Six Crores only) or other, whereas other competing operators signed the agreement at 50 % of above Price. This coercion was never reported at any appropriate forum and nothing of this sort was written in the agreement which was basis of this suit. Merely by saying coercion and discrimination, this cannot

be accepted, unless the same is being proved by cogent evidence. Even an iota of same is not there on record, except a bald statement on oath. There is not statement of account, filed by Respondent nor any representation before any authority, regarding alleged discrimination, nor the contract was terminated or rescinded by Respondent on the basis of this alleged discrimination. More so, there is no proof of above contention of pleading of Respondent. Hence, Respondent failed to prove this contention. Accordingly, this issue is being decided against Respondent.

27. On the basis of above discussion and decision on the issues the very matter under lis in subsequent consolidated Petition 33 of 2019 also fails. The very contention of Respondent, who is Petitioner, in this consolidated Petition, could not be proved substantially by Petitioner. Hence, leading Petition No. 368 of 2017, merits to be allowed and decreed. Whereas, consolidated Petition No. 33 of 2019, merits its dismissal.

ORDER

Petition No. 368 of 2017 is being decreed. Respondent - Kamyab Television Pvt. Ltd. is being ordered to make deposit within two months, from the date of judgment INR 1,83,27,423/- (Rupees One Crore Eighty Three Lakhs Twenty Seven Thousand Four Hundred Twenty Three only), plus simple interest @9%p.a., from the date 31.08.2017, till actual date of payment, in the Tribunal, for making payment to Petitioner.

Broadcasting Petition No. 33 of 2019 is being dismissed with cost.

Office, to prepare decree separately, for these two Broadcasting Petitions.

A copy of this judgment be placed on record on consolidated Broadcasting Petition No. 33 of 2019, for record.